

91-218

Supreme Court, U.S.  
FILED

JUN 19 1991

In The  
SUPREME COURT OF THE UNITED STATES  
Office OF THE CLERK  
October Term, 1991

No.  
RICHARD DeCLARA,  
Petitioner,

-versus-

METROPOLITAN TRANSPORTATION AUTHORITY, METRO-  
NORTH COMMUTER RAILROAD COMPANY, PETER S.  
STANGL, Individually and as President and  
General Manager of Metro-North Commuter Rail-  
Road Company, THOMAS A. CONSTANTINE, Indivi-  
dually and as Superintendent of State Police,  
RAYMOND BURNEY, Assistant Director of Labor  
Relations, Metro-North Commuter Railroad, THE  
STATE OF NEW YORK,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE  
SECOND JUDICIAL CIRCUIT

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## QUESTIONS PRESENTED

(1) Whether the United States Court of Appeals for the Second Circuit Ruling of March 21, 1991, affirming the Order entered in the United States District Court for the Southern District of New York, Robert W. Sweet, Judge, dismissing the complaint herein pursuant to Fed.R.Civ.P. 12(b), inter alia, comported with the Law, the Statutes and Constitutional mandates.

(2) Whether the Special Board of Adjustment was required to address and rule upon all questions and issues presented to that body.

(3) Whether the Railway Labor Act provides sufficient safeguards and protection for a case such as herein where the main issue was not addressed by either the administrative or the judicial tribunals established to determine the rights of parties to disputes.



(4) Whether the Superintendent of the State Police wrongfully revoked plaintiff/appellant's Police Commission in violation of the law and the Constitutional rights of plaintiff/appellant.

(5) Whether plaintiff/appellant has been deprived of his property and property rights and interests without due process and equal protection of the laws.

(6) Whether the Court below wrongfully dismissed plaintiff/appellant's causes of action as against defendants and each of them herein.



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## APPENDIX

Opinion of the United States Court of Appeals for the Second Circuit and all other integral parts of the Appendix are, respectfully, separately bound and presented.





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1.

STATEMENT OF JURISDICTION

This action arises pursuant to the Railway Labor Act, 45 U.S.C., secs. 151, et seq., 42 U.S.C. secs. 1983, 1988, and the Due Process and Equal Protection Clauses of the United States Constitution.

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. secs. 1331 and 1343 (a) (3)(4), in accordance with Federal Rules of Appellate Procedure and Rules of the United States Supreme Court.

2.

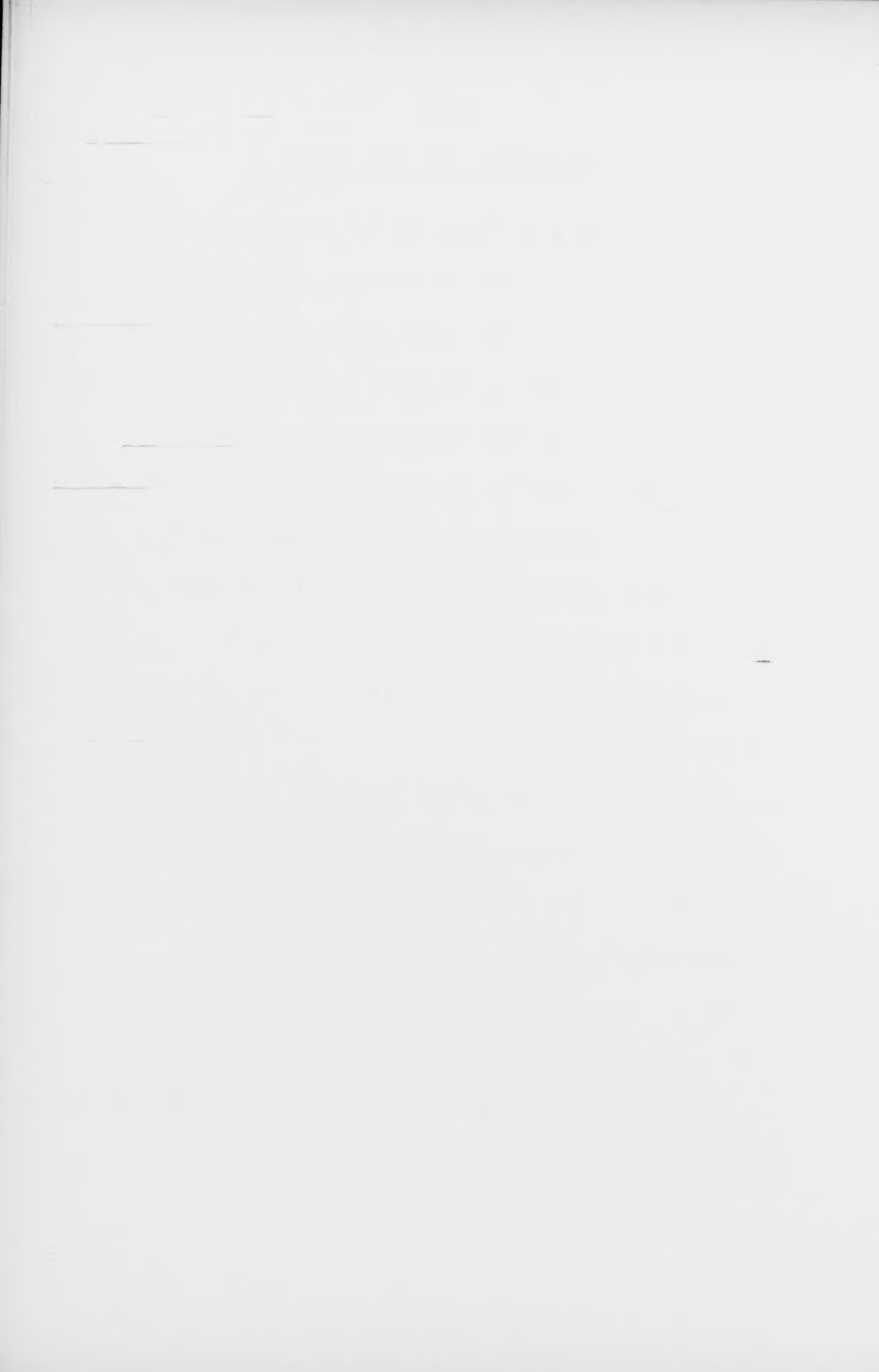
OPINIONS BELOW

The opinion of the United States Court of Appeals for the Second Circuit rendered by HON. JAMES L. OAKES, Chief Judge, Circuit Judges Edward Lumbard and Richard J. Cardamone, is reprinted herein (see Appendix, A-1).



STATEMENT OF THE CASE

This is a deprivation of property and property rights case, alleging violations of 42 U.S.C., secs. 1983 and 1988, the Railway Labor Act (The Act), 45 U.S.C., secs. 151, et seq., and the Due Process and Equal Protection rights of appellant pursuant to the United States Constitution; and seeks redress against defendant Superintendent of State Police Thomas A. Constantine for wrongful revocation of plaintiff/appellant's Police Commission absent the indispensable due process of law petitioner is entitled to, wrongful discharge by defendant Stangl, Metro-North and Burney through a conspiracy to deprive DeClara of his property and property rights without due process of law and without compliance with the terms and conditions of the Railway Labor Act and the collective bargaining agreement herein.



In The  
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No.

RICHARD DeCLARA,

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vs.

METROPOLITAN TRANSPORTATION AUTHORITY  
METRO-NORTH COMMUTER RAILROAD COMPANY,  
PETER S. STANGEL, Individually and as  
President and General Manager of Metro-  
North Commuter Railroad Company, THOMAS  
A. CONSTANTINE, Individually and as  
Superintendent of Police, State of New  
York, RAYMOND BURNER, Assistant Director  
of Labor Relations, Metro-North Commuter  
Railroad, THE STATE OF NEW YORK,

Respondents.

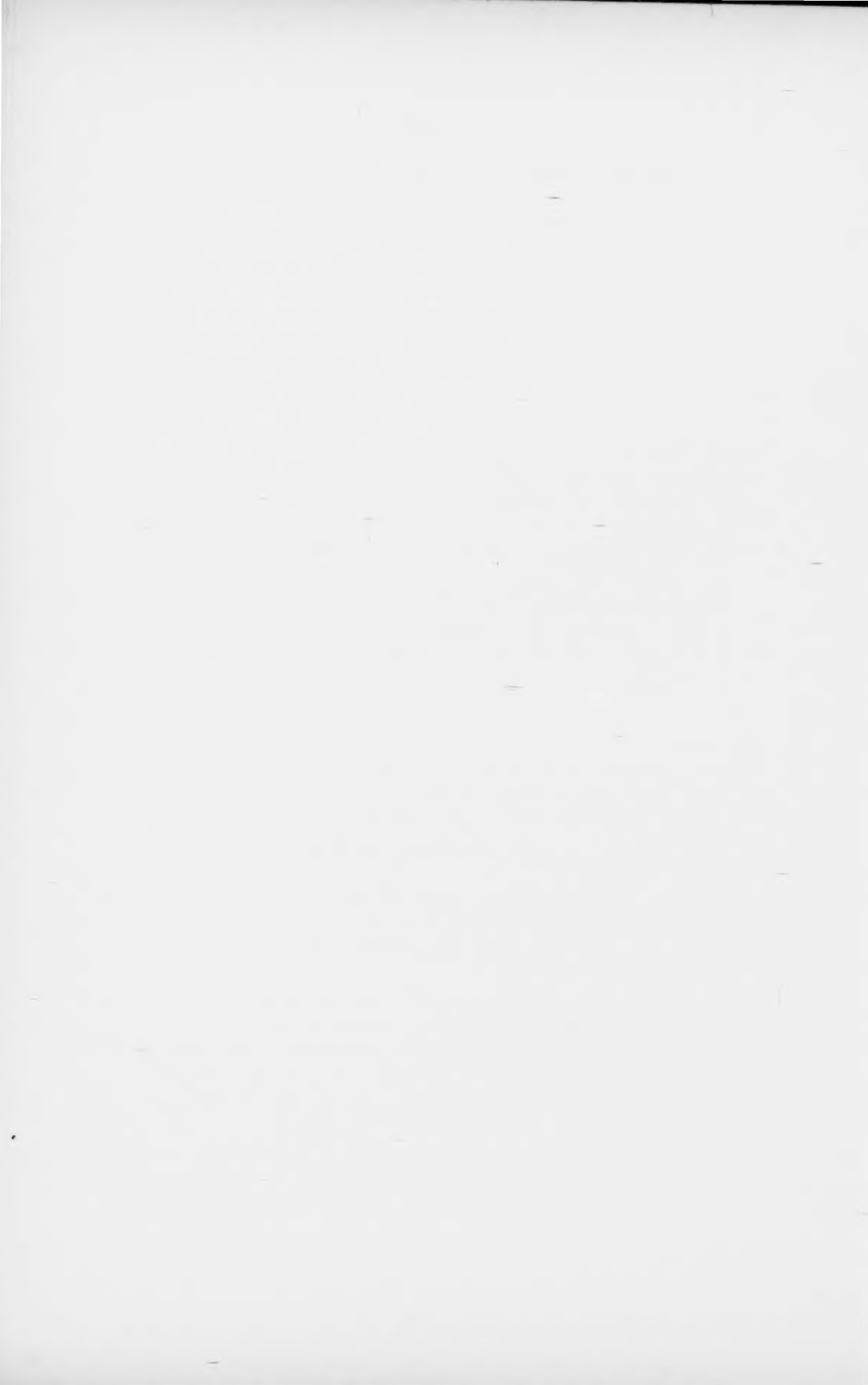
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PETITIONER FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR  
THE SECOND CIRCUIT

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To: The Honorable, The Chief Justice of  
the United States and the Associate  
Justice of the Supreme Court

Petitioner, Richard DeClara  
respectfully prays that a writ of  
certiorari issue to review the Judgment  
of the United States Court of Appeals  
for the Second Circuit made final  
March 21, 1991.





A. Course of the Proceedings and Dispositions

The complaint was duly filed November 2, 1989. Summons was issued and served upon defendants. Motions to dismiss were filed on December 15, 1989. Appellant's opposition to said motions was filed February 13, 1990. Defendants filed reply memoranda and affidavits in support on April 3, 1990. Judge Sweet issued an opinion dismissing the complaint in its entirety on September 4, 1990. Judgment was filed September 6, 1990 with the Order thereon filed September 7, 1990. Appellant's Notice of Appeal was duly filed October 5, 1990.



## B. Statement of Facts

Plaintiff DeClara, a Commissioned Railroad Police Officer since 1967, was unlawfully "stripped" of his Police Commission and his seniority with Metro-North on August 17, 1988 as the result of his alleged lawful termination, upon an alleged lawful revocation of plaintiff's Commission as a Railroad Police Officer. Defendant Constantine did so at the behest of Defendant Stangl.

DeClara is accused of "immoral" actions allegedly unbecoming a Police Officer on some date in March, 1983. This alleged conduct came to the attention and direct knowledge of Metro-North via two Police Captains and Chief of Police Esposito, in March of 1985. Revealingly, defendants refused and failed to take any disciplinary action whatsoever. Defendants, instructively, even refused to investigate said alleged matters.



On August 2, 1988 defendant Stangl forwarded a video tape, allegedly depicting plaintiff in the act of performing the alleged acts complained of; and a letter to defendant Constantine urging the Police Superintendent to view the videotape and thereupon revoke the Police Commission of plaintiff/appellant. Stangl also informed Constantine that DeClara had been suspended pending the determination of Constantine. This assertion by Stangl was not true. DeClara was not taken out of service until August 4, 1988, two days subsequent to the letter and video tape being mailed.

Stangl knew, when he sent the letter requesting revocation of DeClara's Commission that, as a matter of law, THE POLICE COMMISSION COULD NOT BE REVOKED UNLESS AND UNTIL THE DEPARTMENT OF STATE OF THE STATE OF NEW YORK WAS DULY NOTIFIED DeCLARA'S SERVICES WERE TO BE TERMINATED.



Any other act -- as was consummated by Stangl -- violated terms of the Collective Bargaining Agreement, the Cue Process and Equal Protection of Laws and the Railroad Law of the State of New York, an integral part of the contract.

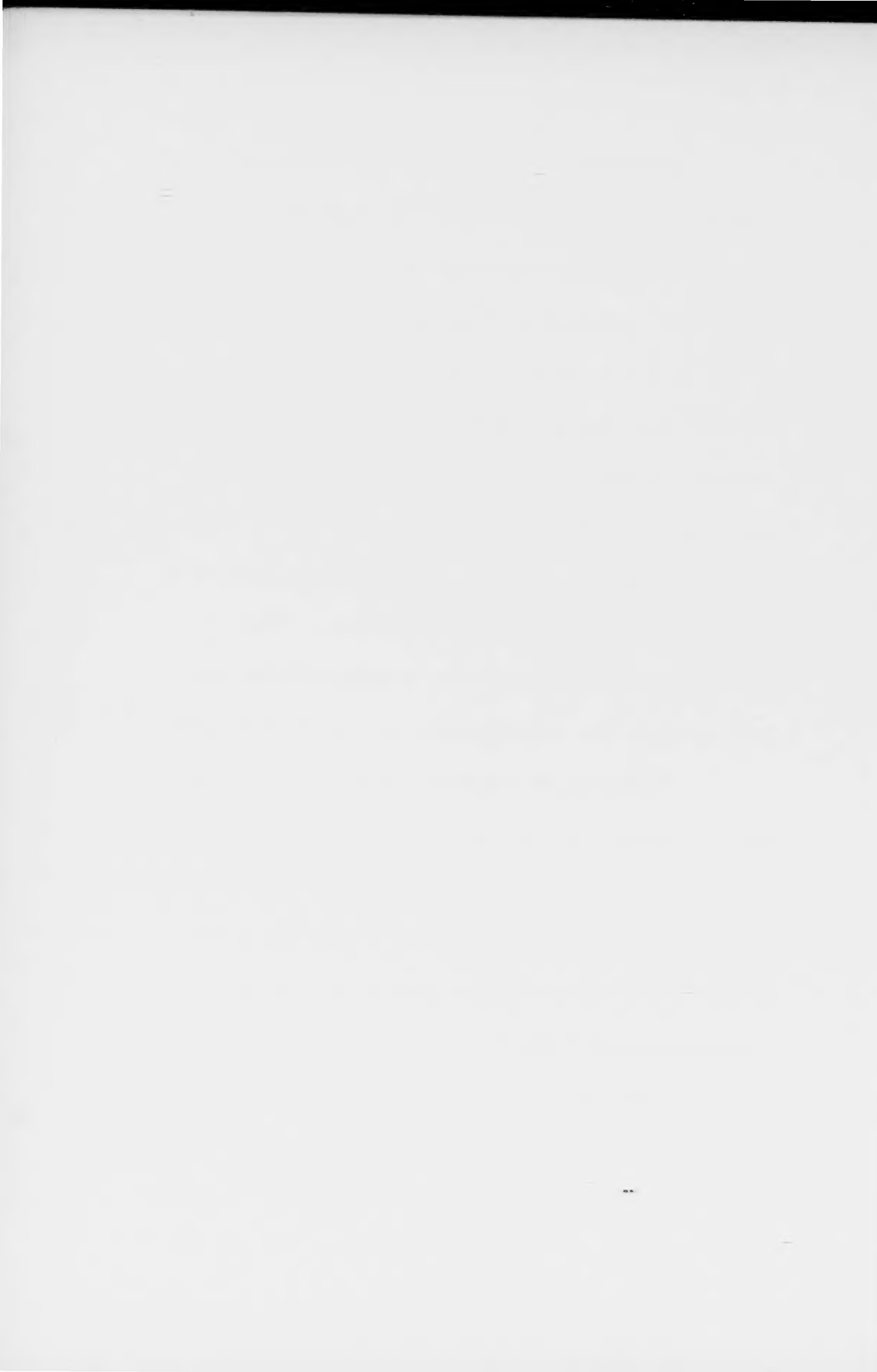
Stangl, together with Constantine in order to circumvent the law and the contract binding the parties, conspired to deprive DeClara of his lawful property rights, his Police Commission -- through the devise of allegedly invoking the "at pleasure" jurisdiction of Superintendent Constantine in an unacceptable manner; thereby taking in a fraudulent manner, plaintiff's right to hold a Police Commission and to be employed by Metro-North. All this was employed by Metro-North's Police Superintendent (State of New York) under color of state law, violative of indispensable Constitutional rights.





Defendants Constantine, Stangl and Burney knew as a matter of law and de facto, that PRIOR TO defendant Constantine's "at pleasure" jurisdiction being invoked, Metro-North had to terminate DeClara. It had to notify the Department of State of that fateful step by a declaration that the employee's services were no longer desired. THEN AND ONLY THEN IS THE JURISDICTION OF DEFENDANT CONSTANTINE INVOKED. THE TRIGGERING MECHANISM IS TERMINATION OF EMPLOYMENT BY METRO-NORTH. NOTHING LESS!

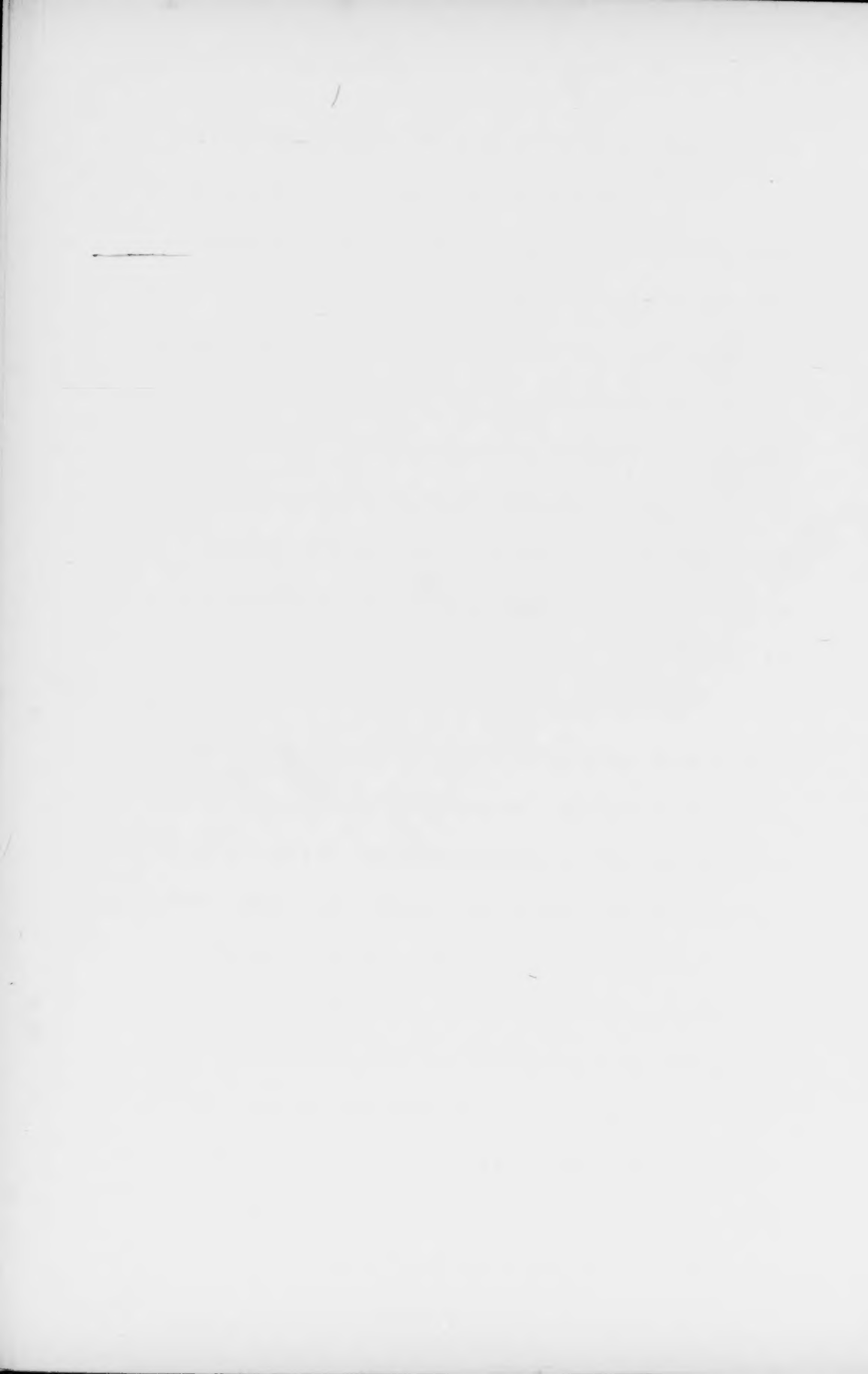
Defendant Stangl, Burner and Metro-North, knowing DeClara was entitled to the guarantees and protections of the Agreement, nonetheless abridged same and deprived DeClara of guarantees and protections duly incorporated therein. The Constitutional safeguards were debilitated by fraudulently alleging that DeClara was automatically terminated from his employment as a Railroad Police Officer with Metro-North when



he failed to maintain a Police Commission.

This was a contrivance to deprive appellant of the protections guaranteed in the Agreement as set forth, to wit, Article 16. Defendants herein effectively nullified Article 16 of said Agreement; all in violation not merely of contractual obligations - but of Constitutional guarantees of property not being taken without Due Process and Equal Protection of the laws!

Defendants and each of them, through fraud and active misrepresentation of the law, unlawfully, knowingly and intentionally misstated and misapplied the letter and spirit of New York Railroad Law, sec. 88 (17) by allegedly invoking and utilizing the "at pleasure" statutory language in an unlawful and unconstitutional manner, to have a pretext for revocation of DeClara's Commission. No statutory, Constitutional or Equity authority exists for this fundamental injury to DeClara.



Metro-North defendants unlawfully terminated DeClara's Police Commission through the fraudulent taking of that valued property right, together with misrepresentation of the Agreement to the Arbitrators. The resultant award by the Arbitrators was affected by said overt fraud in the procurement. The Board award is invalid. The Court's ruling, below, is in error because it assigns no one the responsibility of addressing and determining the rights of plaintiff herein. Sufficiency of the hearing before both Arbitrator and Court was thereby Constitutionally unsound.

Defendant Burney played a destructive role vis-a-vis DeClara in aiding Constantine's revocation of his said Commission. Knowing the revocation of plaintiff's commission was fraudulent and unlawful, he nonetheless intentionally sat on the Arbitration Board as an alleged "neutral" Arbitrator; he then



purposefully, fraudulently and unlawfully ruled against DeClara. He did so by honoring the knowingly fraudulent revocation of DeClara's Police Commission by Constantine. He falsely pyramided that "conclusion" as "determinative" of DeClara's rights pursuant to the Collective Bargaining Agreement.

Additionally, every issue placed before the Board was not determined by that body. The Court below had jurisdiction pursuant to the Act and 42 U.S.C. sec. 1983, in that DeClara was deprived of fundamental rights without Due Process and Equal Protection of the Laws.





## ARGUMENT

1.

THE ARBITRATORS AND THE RESULTANT  
AWARD VIOLATED THE RAILWAY LABOR  
ACT, 45 U.S.C., secs. 151, et seq.  
42 U.S.C. sec. 1983, AND THE DUE  
PROCESS AND EQUAL PROTECTION  
CLAUSES OF THE UNITED STATES  
CONSTITUTION

The Railway Labor Act provides for a  
"Full and Fair Hearing." 45 U.S.C. sec. 157  
Third (b). This "Full and Fair Hearing"  
includes having every question and issue  
presented before the Arbitrators heard and  
determined. Hereinbelow, the Arbitrators  
refused and failed to hear and determine  
every material question and issue placed  
before them, contrary to 45 U.S.C. sec. 157  
Third (b).

On page 14 of the Award, dated  
January 11, 1989, authored by Board Neutral  
Member Thomas F. Carey, the following is  
stated:

"Since the actual authority to  
issue, renew, revoke and/or



restore a police commission rests solely with the Superintendent of the New York State Police, who is not a party to or is not governed by the collective bargaining agreement, no contractual review of that action exists. If that action is to be challenged, the proper forum is a court of competent jurisdiction and is beyond the ambit of contractual arbitral review." (sic!)

Pursuant to the collective bargaining agreement, and the Railway Labor Act, Carey was required to rule on the propriety and validity of the acts of both Stangl and Constantine. The acts of Constantine were predicated upon the acts of Stangl. The law is and has been the same. "... the appointment of a railroad police officer is granted the superintendent of state police upon application of the railroad company and ends upon the policeman's termination as an employee of the railroad company. N.Y. Railroad Law, secs. 88 (1), (16)." Carle v. Conrail (1977), S.D.N.Y., Tenney, J.), 426 F. Supp. 1045, at 1047. (emphasis added)



The New York Railroad Law, sec. (1), authorizes the granting of a Railroad Policeman's appointment by the Superintendent upon application of the Railroad Company. Sec.(16) likewise provides for termination of a Railroad Policeman's appointment when the railroad company no longer desires the services of police officer and notifies the Department of State as to such determination. And, once this requirement is met, then and only then is the "at pleasure" authority to revoke a railroad police commission invoked. Subdivision (16) is the trigger for operation of subdivision (17) of Railroad Law sec. 88.

The wording of the statute is significant:

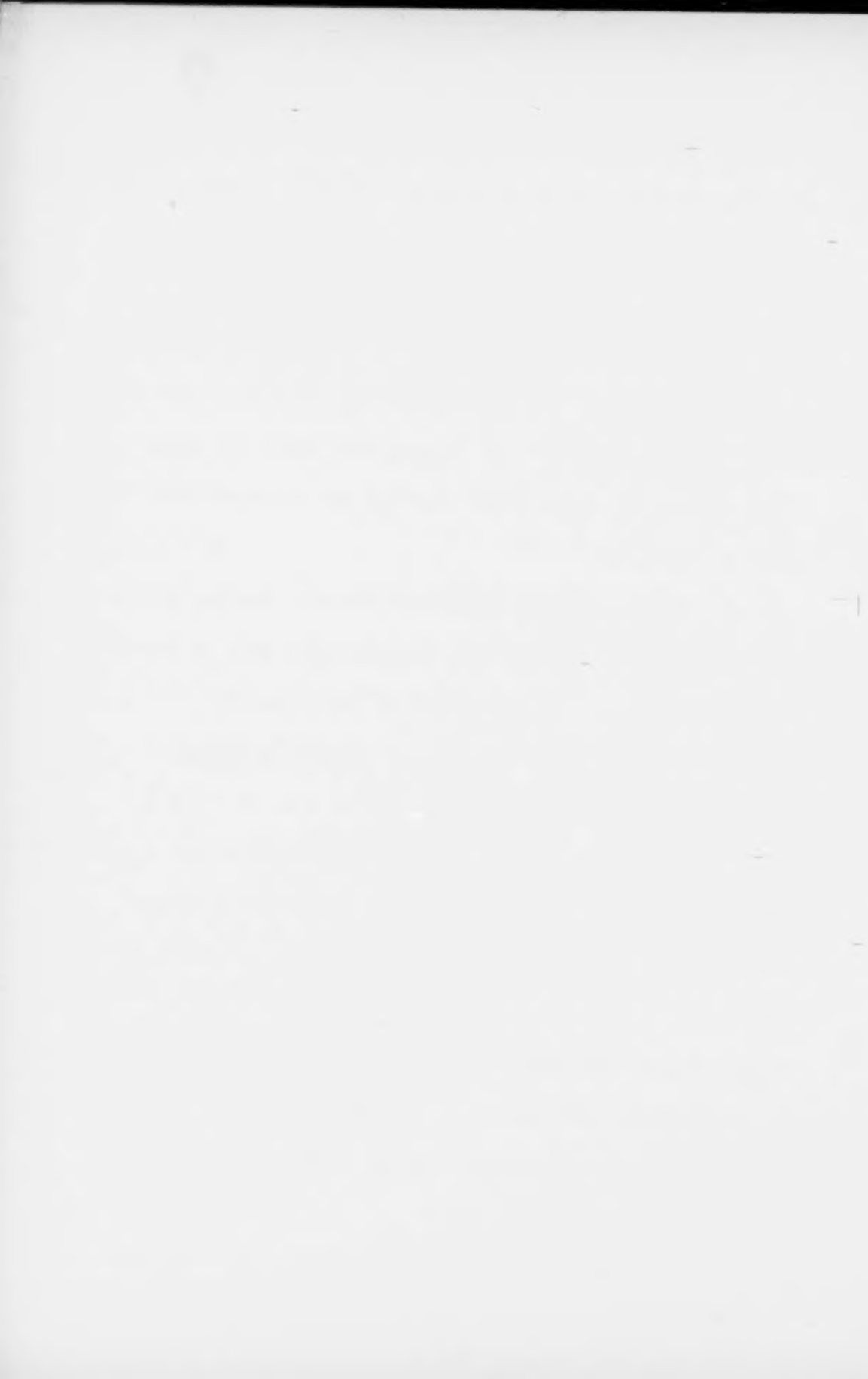
"16. When any such corporation, express company or steamboat company, shall no longer require the services of any policeman appointed under this section it shall file notice to that effect in the office of the department of state, and thereupon such appointment shall cease and be at an end.  
(emphasis added)



As seen, the Superintendent of State Police could not revoke plaintiff's commission without first being notified by defendant Railroad that plaintiff's services were no longer required and that he had been terminated. In both instances, subdivisions 16 and 17, the Department of State of New York must be notified prior to any termination or revocation taking effect.

Incredibly, the Arbitrator below stated that defendant Constantine was not a party to the Collective Bargaining Agreement; therefore his actions were, eo necessitai, beyond contractual review. The Court below echoed that statement and that sentiment. They both, however, are in error where there would be no contract for policemen without the expres participation of the New York State Superintendent of Police! There would be no Police Officers for the railroad without the express authority of the State Police Superintendent.

The actions or non-actions of Constan-





tine are inextricably intertwined with the parties to the Collective Bargaining Agreement. He is implicitly and explicitly the integral factor of the entire Railroad Police Structure. His actions must be subject to scrutiny, as well as review both administratively and judicially, for a cohesive, Constitutional Railroad system to prove operative and effective.

Instructively, the wording of the New York Railroad Law sec. 88(5) deals solely with the initial investigation in determining whether an applicant is fit to be commissioned. There is no provision whatsoever for investigating whether or not a Police Officer, once commissioned, should maintain his commission.

Absent a thorough and complete ruling and analysis Constantine's revocation of plaintiff's commission, the letter and spirit of the Railway Labor Act, the Collective Bargaining Agreement and the United States Constitution have been egregiously violated herein.



Defendant Railraod herein would have this Court believe the Superintendent of State Police has nothing to do whatsoever with the Collective Bargaining Agreement (the Contract). However, it is only with the Superintendent's approval and sanction that the Railroad can possess a Police Force. Without his express authorization there is no contract. Therefore, the Superintendent's acts are subject to the very interstitial fabric of the contract itself.

Constantine, as the State Superintendent of Police, supplies the cohesion, the glue, the binding matrix for each Police Officer to serve in that capacity and for the Railroad to operate a Police Force. He is not a mere status symbol, a legal and political eunich as Metro-North and defendants would have us believe.

The Superintendent is not merely a passive conduit in the Commissioning of the Police Officers such as plaintiff/appellant herein. The Courts below, casting Superin-



tendent Constantine in the role of a mere pawn and supernumerary discredit his awesome power and Statewide suzerainty. These powers directly affect every material State and Federal infringement on the Commerce Clause of the United States Constitution. Thus, effectively characterizing the awesome powers of the State Superintendent of Police as a feckless non-enity a wrong de facto and de jure. It is factually, by Statute and by State and Federal Constitutional limitations, an error both of Constitutional magnitude and colossal conceit.